



Request for Proposals (RFP)

USED OIL AND FILTER RECYCLING PROGRAM MANAGEMENT

The City of Covina, California ("City") is requesting proposals from qualified contractors with experience administering and managing used motor oil and filter recycling programs. The successful contractor ("Contractor") will be required to provide administration and management of the City's Used Oil and Filter Recycling program.

The term of the agreement is for three years, with two optional one-year extensions. As the current agreement is set to expire on December 31, 2021, time is of the essence to select and award a contractor. The City anticipates City Council authorization to award a contract/agreement on December 7, 2021.

1. Introduction

The City of Covina, incorporated in 1901, covers approximately seven square miles located in the San Gabriel Valley area of Los Angeles County, approximately 22 miles east of Downtown Los Angeles. The City is bordered by the Cities of Azusa and Glendora to the north, West Covina to the west and south, and the City of San Dimas and unincorporated portions of Los Angeles County to the east. The City is seeking contracted services to provide program management of its Used Oil and Filter Recycling program.

Interested parties may not communicate about this RFP with elected officials or staff representing the City of Covina, or any other individuals retained by the City to support this procurement. All questions and requests for clarification must be submitted in writing to the point of contact identified in Section 6 of this RFP by **4:00 P.M. local time on Thursday, October 14, 2021**.

Responses to questions submitted prior to the established question deadline will be released on **Wednesday, October 20, 2021**.

Proposal submittal deadline is **4:00 P.M. local time on Thursday, November 4, 2021**.

Proposals will be received at the **Office of City Clerk, 125. E. College Street, Covina, CA 91723**.

All proposals must be received by the City Clerk **prior** to the aforementioned deadline. Any proposal received by the City Clerk after the deadline shall not be considered.

2. Project Summary

The Contract is being offered for award to the successful proposer to provide administration and project management of the City's Used Oil and Filter Recycling program.

Cities, Counties, and other qualified jurisdictions are eligible to receive funding under the State of California Department of Resources Recycling and Recovery (CalRecycle) Used Oil Payment Program (OPP) for used oil and used oil filter collection and recycling programs. Local governments that comply with Public Resource Code § 48690 et seq. are eligible to apply for and, if approved, receive payment through the OPP. Participating jurisdictions are required to have a used oil collection program which includes at least one certified used oil collection center per 100,000 residents and/or a curbside program that includes monthly used oil collection and a public education program that informs the public of locally available used oil recycling opportunities.

The City of Covina has provided used oil and used oil filter recycling education programs since 1994. Through the City's program, the contractor provides education and outreach to residents regarding the safe disposal of used motor oil and filters, provides support to six (6) local Certified Collection Centers (CCCs) as they adhere to regulatory requirements (signage, accepting oil and filters from the public and offering the \$.40 per gallon rebate, etc.), coordinate and host two used oil and filter recycling events per calendar year, conduct certified center site visits, prepare annual reports on behalf of the City and administers the City's used oil and filter recycling efforts.

Payments are calculated per capita using the Department of Finance's population statistics. Typically, the City of Covina receives approximately \$13,330 per year in funding for this program. However due to the pandemic, the annual funding amount in FY 21 was reduced to \$6,118. We anticipate that OPP funds will resume to previous levels once the economy reopens, however we are requesting all proposers to consider the potential for funding amounts to fluctuate as they prepare their proposals. The City will be recommending a three (3) year contract term with the option of two (2) one-year extensions for a possible five (5) year agreement. Throughout the course of the agreement, the City may confer with the selected contractor and alter grant programming due to funding limitations or similar factors.

3) Proposal Submittal Deadline and Format

Proposal packages are to be submitted to the City on or before **4:00 p.m. on Thursday, November 4, 2021**. No oral, faxed, emailed, or telephonic proposals or alternatives will be considered. A proposal may be withdrawn without prejudice upon written request by the proposer filed with the City Clerk before the proposal submission deadline. Proposals must remain valid and shall not be subject to withdrawal for 90 calendar days after the deadline for submission of proposals.

Proposals received after the stated deadline will not be accepted. The time of delivery shall be definitively determined by the time-stamping clock located in the City of Covina City Clerk's Office, 125 E. College Street, Covina CA 91723. It is the proposer's sole responsibility to see that its proposal is received in proper time, and proposers assume all risks arising out of the means of

delivery. Any proposal received after the deadline will be returned to the proposer unopened. All accepted proposals shall become the property of the City.

Proposal packages are to be submitted to:

Sharon Gallant, Environmental Services Manager
City of Covina Department of Public Works
c/o City of Covina City Clerk's Office
125 E. College Street
Covina, CA 91723

All responses must be completed as required, signed by an officer of the firm who is authorized to enter into a binding agreement with the City on behalf of the company, and must be received in the place and time designated above. Proposals (as described below) are to be submitted in a sealed envelope clearly marked with the contractor's name, address, telephone number, and email address. Submit one sealed envelope clearly identified as **"Request for Proposal – Used Oil Recycling and Filter Program Management,"** containing **three (3) copies of the proposal.**

4) Proposal Content:

A proposal shall be concise, well-organized, and demonstrate the contractor's qualifications and experience relating to the proposed project. Proposals shall reflect all costs associated with the proposed project. At a minimum, proposals shall include the following information:

- **The Request for Proposal (submit 3 copies)**

The proposal should include, as a minimum, the following information, presented in a clear and concise manner:

- **Cover Letter:** Provide a brief statement affirming why the firm is best qualified to perform the requested services and acknowledging that the information provided in the proposal is true, accurate and current. Provide contact information for the contractor and the person authorized to execute the agreement.
- **Work Plan:** A statement of your understanding of the project and a detailed description of your approach to implement all of the tasks listed under Section 5, "Scope of Services."
- **Organizational Chart:** A chart identifying the key personnel assigned to the project. Identify the name of the project manager and the individual authorized to negotiate the contract on behalf of the contractor's firm. Include the work load of the project manager and key team members, as well as their availability to complete the tasks as outlined under Section 5, "Scope of Services."
- **Firm Qualifications:** Identify a minimum of three (3) similar contracts/agreements executed within the past five (5) years.

- **References:** Provide three (3) references for similar assignments completed for other municipal or state agencies.
- **Cost Proposal (ATTACHMENT A):** The base cost proposal for project management of the Used Oil and Filter Recycling program shall include:
 - Hourly Rate Schedule: A statement of hourly rates for all proposed staff classifications.
 - Time estimates for principals, staff, etc. with hourly billing rates.
 - Cost for materials and incidental services, including travel expenses, copying, printing, and plotting. Any proposed percentage mark-up for reimbursable expenses.
 - Total cost per task.
 - Clearly identify any additional or reoccurring costs.
 - The cost proposal grand total shall be an amount "Not-to-Exceed."
- **Objections to Professional Services Agreement:** Objections shall be submitted in writing with justification clearly stated. Any contractor with objections to terms contained in the City's Professional Services Agreement (the "Contract") (Attachment B) must advise the City of such objections and requested modifications as part of its Services Proposal. Failure of a proposer to accept the terms of the City's Professional Services Agreement may result in the rejection of the proposal. It shall be the responsibility of the prospective contractor to review all sections and exhibits of the Professional Services Agreement, including insurance requirements. If no objections are received, the City will assume the proposer is able to and will enter into the Professional Services Agreement and fulfill the terms and requirements set therein. The City may recover any damages accruing to the City as a result of the Contractor's failure or refusal to execute the City's Professional Services Agreement.

5) **Scope of Services:**

Proposals should provide a detailed description of the contractor's approach to implement the Scope of Services listed below.

- **Task 1 – Certified Collection Center Administration** – Contractor to provide two (2) annual site visits to six (6) Certified Collection Centers within Covina to distribute oil containers purchased by the City, provide technical support, ensure signage, equipment and reimbursement request are supported, perform the annual site visit with the center to ensure compliance with State requirements and coordinate used oil collection and filter exchange events with participating centers.
- **Task 2 – Coordinate and Host Collection Event/Filter Exchange** – Each calendar year coordinate and host up to two (2) collection/filter exchange events at a participating CCC on Saturday morning between the hours of 9 a.m. to 1 p.m. Contractor to promote and advertise the event through various media outlets (print, community calendar, direct utility

mailing, ad in Red Plum, social media, etc.), provide staffing, signage, tent, table and chairs for the event, coordinate with the participating center to ensure enough filter exchange stock on hand (or vouchers if particular filter needs to be ordered), outreach materials, recycling containers, funnels, shop towels and other promotional items (purchased by the City). Coordinate with the CCC manager on the purchase of filters to exchange and capacity for collection of used motor oil and filters brought to the event. Provide a summation of the event to the City within 10 days after the event has concluded. Report will provide number of participants, number of oil/filters collected, number of filters exchanged, total costs, survey of participants (where did they hear about the event), copies of the educational material provided and numbers of promotional items distributed.

- Task 3 – Public Education and Outreach – Contractor to provide infographics and educational materials (print and social media) that can be used to promote used oil and filter recycling among DIYers. Outreach messaging should seek to increase the collection of used oil and filters and prevent the discharge of used oil into local waterways.
- Task 4 – Program Administration – Prepare grant funding request submittal, annual report and acquire grant manager approval on all purchases and development of outreach materials. Follow CalRecycle requirements and successfully comply with OPP guidelines.
- Task 5 – Innovation Effort – With an amount not to exceed \$1,500 of the overall grant award, brainstorm and implement an innovative effort each year to either increase public awareness about used oil/filter collection/recycling OR storm water pollution prevention. Effort should be submitted to the City representative by June 1st of each year for consideration and have CalRecycle's approval prior to implementation.
- Task 6 – Options – Given the pandemic, please provide several options for the City of Covina to consider depending on if historical amounts of funding are awarded versus pandemic level of funding.

City Verifications and Inspections

It shall be the responsibility and prerogative of the City to inspect, investigate, conduct inquiries into, supervise, and otherwise direct the activities of any and all personnel providing service under the Contract. Such activities will be conducted on a regular, periodic basis, either announced or unannounced by the City Representative, or his/her designee. The Contractor shall only participate in activities approved by the City Representative. If the Contractor is given direction to participate in activities by any other person other than the City Representative, this request needs to be reported to the City Representative immediately.

5.16 Additional Contractor Requirements / Information

The Contractor must also be able to meet the requirements listed below prior to commencing service:

1. Licensed to do business in the State of California.
2. Licensed to do business in the City of Covina.

6) **RFP Inquiries and Addenda**

For inquiries regarding this RFP, please contact Sharon Gallant, Environmental Services Manager, via electronic mail at sgallant@covinaca.gov. Proposers must e-mail inquiries no later than **4:00 p.m. on Thursday, October 14, 2021**. Inquiries received after that date and time will not be answered. Please include the following in the subject line of the e-mail: "Inquiry re: RFP for Used Oil and Filter Recycling Program Management." Telephonic inquiries will not be accepted.

The City will issue any revisions to this RFP as addenda. The City will distribute addenda to all potential proposers and post addenda on the City's website. Proposers are responsible for receipt of all addenda. Therefore, each proposer should contact the City to verify that he or she has received all addenda issued, if any. The City's issuance of a written addendum is the only official method whereby the City will interpret, clarify, or provide additional information concerning this RFP. No oral revisions to any provision in this RFP shall be binding.

7) **Anticipated Schedule**

Milestone	Date
RFP Issued	October 4, 2021
Deadline for Inquiries	October 14, 2021
City to Release Responses to Inquiries	October 20, 2021
Deadline for Proposals	November 4, 2021
Proposer Interviews (if needed)	November 15, 2021
Award of Contract (tentative)	December 7, 2021

8) **Evaluation Procedure**

The Review Committee will evaluate each proposal for completeness and content. Each proposal will be evaluated based upon the relevant qualifications and experience of the proposer. The Review Committee may choose to interview two or more closely ranked firms, but will not expect or schedule elaborate presentations. License status and references will also be verified. The proposal review will focus on the following criteria:

- **Program understanding/program approach (maximum of 35 points).** The firm's proposal adequately demonstrates an understanding of the City's Used Oil and Filter Recycling program and experience in providing these services, which is documented in its proposal.
- **Experience (maximum of 35 points).** The firm's technical expertise and professional references with similar work. Qualifications of the firm and the individuals assigned to perform the work.
- **Program schedule (maximum of 20 points).** Thoroughness of the program schedule; ability to fulfill program requirements within the selected timeframe, availability of staff

as required by the City.

- **Program cost proposal (maximum of 10 points).** Proposal with the lowest cost will receive the maximum points allowed. All other proposals receive a percentage of the points available based on their cost relationship to the lowest.

9) Professional Services Agreement

The City will identify the proposer that best meets the needs of the City and enter contract negotiations with that highest ranked firm. Should the City fail to reach agreement with the top ranked proposer, the City may enter negotiations with the next highest rated proposer, and so on. City staff will make a recommendation to the City Council for the award of the Contract to the proposer that best furthers the City's objectives.

The successful proposer will be expected to execute the Contract no more than twenty-five (25) calendar days after City Council approval. A recommendation for Contract award will tentatively be presented to the City Council for consideration on December 7, 2021.

10) Insurance Requirements

The successful proposer shall secure all insurance required under the Contract and provide any necessary documentation to the City fifteen (15) calendar days subsequent to City Council approval.

11) Acceptance or Rejection of Proposal

The City reserves the right to accept, reject, or accept a portion of any and all proposals. The City also reserves the right to waive any informality or irregularity in any proposal or in the bidding as deemed to be in its best interest. Additionally, the City may, for any reason, decide not to award the Contract as a result of this RFP or cancel the RFP process. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by the submission of the proposal. The City reserves the right to negotiate services and associated costs.

12) Legal Responsibilities

All proposals must be submitted, filed, made, and executed in accordance with State and Federal laws related to proposals for contracts of this nature whether the same or expressly referred to herein or not. Any company submitting a proposal will by such action thereby agree to each and all of the terms, conditions, provisions, and requirements set forth, contemplated, and referred to in the RFP, and other contract documents, and to full compliance therewith.

13) Discrepancies and Misunderstandings

Proposers must satisfy themselves by personal examination of the worksite, specifications, and other Contract documents and by any other means as they may believe necessary, as to the actual physical conditions, requirements, and difficulties under which the Services must be performed.

No proposer will at any time after submission of a proposal make any claim or assertion that there was any misunderstanding or lack of information regarding the nature or amount of work necessary for the satisfactory completion of the job. Any errors, omissions, or discrepancies called to the attention of the City will be clarified by the City in writing to all proposers prior to the submission of the proposals.

14) Proposer Interested in More than One Proposal

No person, firm, or corporation will be allowed to make or file, or be interested in more than one proposal for the same work unless alternate proposals are called for. No proposal will be accepted from a proposer who has not been licensed in accordance with the provisions of the State Business and Professional Code.

Attachments:

Attachment A: City of Covina Professional Services Agreement

ATTACHMENT A

CITY OF COVINA PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is dated January 1, 2022 (“Effective Date”) and is between the City of Covina, a California municipal corporation (“City”) and [Contractor’s Legal Name], a [Legal Form of Entity, e.g., California corporation, limited partnership, limited liability company] (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City desires to utilize the services of Contractor as an independent contractor to provide program management of the City’s Used Oil and Filter Recycling program.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Contractor and Contractor desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The parties therefore agree as follows:

1. Term of Agreement. The term of this Agreement shall be from the Effective Date through June 30, 2025, unless sooner terminated as provided in Section 13 of this Agreement. The City may, upon mutual agreement, extend the contract for two (2) additional one-year terms. In no event shall this Agreement be extended beyond June 30, 2027.

2. Compensation.

A. Compensation. As full compensation for Contractor’s services provided under this Agreement, City shall pay Contractor a sum not to exceed [Written Amount] Dollars (\$[Numerical Amount]) (the “maximum compensation”), based on the hourly rates set forth in the Approved Fee Schedule, attached hereto as **Exhibit A**. Any terms in Exhibit A, other than the payment rates and schedule of payment, are null and void.

B. Expenses. The amount set forth in paragraph A shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

C. Additional Services. City shall not allow any claims for additional services performed by Contractor, unless the City Council and the Contractor Representative authorize the additional services in writing prior to Contractor’s performance of the additional services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council shall be compensated at the rates set forth in **Exhibit A**, or, if not specified, at a rate mutually agreed to by the parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

3. Contractor’s Services.

A. Scope of Services. Contractor shall perform the services described in the Scope of Services, attached as **Exhibit B**. City may request, in writing, changes in the scope of services to be

performed. Any changes mutually agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be [Name], [Title] (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Time for Performance. Contractor shall commence the services on the Effective Date and shall perform all services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

D. Standard of Performance. Contractor shall perform all services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Contractor has, or will secure at its own expense, all personnel required to perform the services required under this Agreement. All of the services required under this Agreement shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

F. Compliance with Laws. The Contractor shall keep itself informed of all local, state and federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such ordinances, laws and regulations. The City and its agents shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this section. This Agreement may call for services that, in whole or in part, constitute "public works," as defined in the California Labor Code. Therefore, as to those services that may be "public works", Contractor shall comply in all respects with all applicable provisions of the California Labor Code, including those set forth in **Exhibit C**.

G. Permits and Licenses. Contractor shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

4. Method of Payment.

A. Invoices. Contractor shall submit to City an invoice, on a monthly basis or less frequently, for actual services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period, hourly rates charged, if applicable, and the amount due. If City disputes any of Contractor's fees, it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

B. Payment. City shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in Section 2 of this Agreement. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor. For all reimbursements authorized by this Agreement, Contractor shall provide receipts on

all reimbursable expenses in excess of Fifty Dollars (\$50) in such form as approved by the Finance Director.

C. **Audit of Records.** Contractor shall make all records, invoices, time cards, cost control sheets and other records maintained by Contractor in connection with this agreement available during Contractor's regular working hours to City for review and audit by City.

5. Ownership of Documents. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed ("written products") pursuant to this Agreement shall become the sole property of the City without restriction or limitation upon its use and may be used, reused, disseminated or otherwise disposed of by the City without the permission of the Contractor. With respect to computer files containing data generated for the work, Contractor shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files. Contractor may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Contractor.

6. Independent Contractor.

A. Contractor is, and shall at all times remain as to City, a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the performance of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

B. No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

7. Confidentiality. All data, documents, discussion, or other information (collectively "data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential. Contractor shall keep all data confidential and shall not disclose any data to any person or entity without City's prior written consent. City shall grant such consent if disclosure is legally required. Contractor shall return all data to City upon the expiration or termination of this Agreement. Contractor's covenant under this Section 7 shall survive the expiration or termination of this Agreement.

8. Conflicts of Interest. Contractor and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Contractor's services under this Agreement, including the Political Reform Act (Gov. Code, § 81000 et seq.) and Government Code Section 1090. During the term of this Agreement, Contractor may perform similar services for other clients, but Contractor and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity

for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor shall incorporate a clause substantially similar to this Section 8 into any subcontract that Contractor executes in connection with the performance of this Agreement.

9. Indemnification.

A. Indemnities for Third Party Claims.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively “Indemnitees”), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens and losses of any nature whatsoever, including fees of accountants, attorneys or other professionals, and all costs associated therewith, and the payment of all consequential damages (collectively “Liabilities”), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liability with counsel of the Indemnitees’ choice, and shall pay all costs and expenses, including all attorneys’ fees and experts’ costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers’ compensation law regarding Contractor and Contractor’s employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers’ compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor’s failure to promptly pay to City any reimbursement or indemnification arising under this Subparagraph A. 2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 9 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor’s subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor’s subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or

passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties.

B. Workers' Compensation Acts Not Limiting. Contractor's indemnifications and obligations under this Section 9, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 9 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section 9 shall survive the expiration or termination of this Agreement.

10. Insurance.

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000) per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 10.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Contractor has no employees while performing services under this Agreement, workers' compensation policy is not required, but Contractor shall provide an executed declaration that it has no employees.

B. Acceptability of Insurers. The insurance policies required under this Section 10 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section 10.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming the City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 10 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section 10 shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section 10 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) calendar days' prior written notice to City. If any insurance policy required under this Section 10 is canceled or reduced in coverage or limits, Contractor shall, within two (2) business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 10 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section 10, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 10. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 9 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 10.

11. Mutual Cooperation.

A. City's Cooperation. City shall provide Contractor with all pertinent data, documents and other requested information as is reasonably available for Contractor's proper performance of the services required under this Agreement.

B. Contractor's Cooperation. In the event any claim or action is brought against the City relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance that City requires.

12. Records and Inspections. Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of 3 years. Contractor shall, without charge, provide City with access to the records during normal business hours. City may examine and audit the records and make transcripts therefrom, and inspect all program data, documents, proceedings and activities.

13. Termination or Suspension of Agreement.

A. Right to Terminate or Suspend for Cause. If Contractor violates any of the provisions of this Agreement or fails to properly provide the services required by this Agreement to the satisfaction of the City, the City shall provide to the Contractor a written Notice to Cure the specific deficiencies and shall allow a reasonable cure period of sixty (60) calendar days (unless another cure period is otherwise agreed to in writing by both parties) to cure and correct these deficiencies to the City's satisfaction. In the event Contractor fails to correct the deficiencies in the allotted cure period, the City shall have the right to terminate this Agreement with thirty (30) calendar days' written notice to the Contractor. The effective date of the termination of the Agreement pursuant to this subsection A shall be the 31st day after the date of the written notice of termination.

B. Right to Terminate or Suspend due to Modernization. If the City chooses to modernize an elevator control system, this Agreement may be canceled with thirty (30) calendar days' written notice.

C. Obligations upon Termination. Contractor shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Contractor, City shall pay Contractor based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the services required by this Agreement.

14. Force Majeure. Contractor shall not be liable for any failure to perform its obligations under this Agreement if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or

other casualty, or other causes beyond Contractor's reasonable control and not due to any act by Contractor.

15. Notices. Any notices, consents, requests, demands, bills, invoices, reports or other communications which either party may desire to give to the other party under this Agreement must be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by reputable document delivery service or courier service during Contractor's and City's regular business hours, or (c) five business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the party to be notified as set forth below:

If to City:

City of Covina Department of Public Works
Attn: Environmental Services Division
125 E. College Street
Covina, California 91723

If to Contractor:

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

17. Prohibition of Assignment and Delegation. Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Contractor from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

18. No Third-Party Beneficiaries Intended. Except as otherwise provided in Section 9, this Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

19. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the party making

the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

20. Exhibits. Exhibits A constitutes a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

21. Entire Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those expressly set forth in this Agreement.

22. Amendment of Agreement. This Agreement may be amended only by a writing signed by both parties. The City Manager is authorized to sign an amendment to this Agreement on the City Council's behalf and without the City Council's prior approval to make the following non-substantive modifications to the Agreement: (a) name changes; (b) extensions of time; (c) non-monetary changes in the scope of work; and (d) termination of the Agreement.

23. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties to this Agreement.

24. Word Usage. Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

25. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

26. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Covina.

27. Attorneys' Fees. In any litigation or other proceeding by which one party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

28. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

29. Authority to Execute Agreement. The person or persons executing this Agreement on behalf of Contractor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

[SIGNATURE PAGE FOLLOWS]

The parties, through their duly authorized representatives, are signing this Agreement on the date stated in the introductory clause.

City:

City of Covina,
a California municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: Georgianna Nicole Alvarez
Title: Chief Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Name: Candice K. Lee
Title: City Attorney

Contractor:

[Contractor's Legal Name],
a [Legal Form of Entity]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Two signatures of corporate officers required for corporations under Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.)

EXHIBIT A
APPROVED FEE SCHEDULE

EXHIBIT B
SCOPE OF SERVICES